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08/985,514	12/05/1997	DAVID I. POISNER	042390.P3919	3690

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EXAMINER

KANG, PAUL H

ART UNIT	PAPER NUMBER
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2141

DATE MAILED: 08/25/2003

22

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Applicati n N

08/985,514

Applicant(s)

POISNER, DAVID I.

Examiner

Paul H Kang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 April 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 26-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Claims 1-25 have been previously cancelled. Newly added claims 26-37 are now pending.

#### ***Claim Rejections - 35 USC § 101***

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claim 29 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. "A machine-readable medium having stored thereon data representing instructions" is non-statutory. Data representing instructions is non-statutory descriptive material and should be distinguished from "instructions" or "computer code." MPEP 2106.

#### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 26-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharpe, Jr. et al., US Pat. No. 5,960,214 in view of O'Hagan et al., US Pat. No. 6,314,406 B1.

6. As to claims 26, 29 and 32, Sharpe teaches the invention substantially as claimed. Sharpe teaches a method, a machine-readable medium, and a central computer system comprising:

    sending a request for information from a central computer to a remote database (the Distributed Control System 14 (DCS), in conjunction with FMS, communicates with remote database 40 to request updated smart device configuration information; Sharpe, Figure 1; col. 1, lines 36-58 and col. 6, lines 17-57), the central computer monitoring and operating a smart appliance sharing a physical environment with the central computer [the DCS is located remotely to the smart devices; Sharpe, col. 5, line 65 – col. 6, line 62], the information provided by the manufacturers (Sharpe, col. 2, line 30-67).

    receiving the requested information from the remote database at the central computer, the information being related to the smart appliance (Sharpe, col. 1, lines 36-58 and col. 5, line 65 – col. 6, line 62); and

    transmitting a control signal from the central computer to the smart appliance, the control signal being generated by the central computer based on the information received from the remote database, wherein the control signal functionality operates the smart appliance (based upon the retrieved information the smart devices are controlled, e.g. update configuration, perform service and calibration; Sharpe, col. 1, lines 36-58 and col. 5, line 65 – col. 6, line 62).

    However, Sharpe does not explicitly teach that the remote database is maintained and periodically updated by a seller of the smart appliance. Sharpe, however, does disclose as prior

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art, the manufacturer providing information regarding the smart device (Sharpe, col. 2, lines 30-67). This disclosure is silent as to whether the manufacturer maintains and updates that data.

In the same field of endeavor, O'Hagan teaches the use of seller web sites (maintained and updated by the seller) to download product related information (Advertisement banners, among other information, are downloaded and control information to display the banner is generated by the controller, O'Hagan, col. 3, lines 36-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the use of seller databases into the system of Sharpe for the purpose of obtaining most relevant and up to date information.

7. As to claims 27, 30 and 33, Sharpe-O'Hagan teaches the method, machine-readable medium, and central computer system as applied above, wherein the seller of the smart device comprises one or more of a manufacturer of the smart device, a wholesaler of the smart device, and a retailer of the smart device (Sharpe, col. 2, line 30-67; O'Hagan, col. 3, lines 36-65).

8. As to claims 28 and 31, Sharpe-O'Hagan teach the invention substantially as claimed. Sharpe-O'Hagan teach distributed network communications, including the implementation of TCP/IP (see Sharpe, col. 15, lines 9-37). However, Sharpe-O'Hagan, as applied above, do not explicitly teach the method, machine-readable medium, and central computer system as applied above, wherein the central computer requests the information from the remote database using an Internet connection.

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O'Hagan discloses the use of an Internet connection for data request (O'Hagan, col. 7, line 7-18). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the Internet connection of O'Hagan into the system of Sharpe-O'Hagan as previously applied, for the purpose of increasing data reach, scalability and compatibility of the networking system.

9. As to claim 34, Sharpe-O'Hagan teaches the method, machine-readable medium, and central computer system as applied above, wherein the communication device comprises a modem (Sharpe, col. 6, lines 41-57).

10. As to claim 35, Sharpe teaches the invention substantially as claimed. Sharpe teaches a method comprising:

Collecting usage information from a smart appliance at a central computer sharing a physical environment with the smart appliance (Sharpe, Figure 1; col. 1, lines 36-58 and col. 6, lines 17-57);

Sending a request for maintenance information from the central computer to a remote database, the information is provided by a seller of the smart appliance (Sharpe, Figure 1; col. 1, lines 36-58 and col. 6, lines 17-57);

Receiving the requested maintenance information from the remote database at the central computer, the maintenance information related to scheduled repairs of the smart appliance (Sharpe, col. 1, lines 36-58 and col. 5, line 65 – col. 6, line 62); and

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Determining whether the smart device is due for a scheduled repair using the received maintenance information and the collected usage information (Sharpe, col. 1, lines 36-58 and col. 5, line 65 – col. 6, line 62).

However, Sharpe does not explicitly teach that the remote device is updated by a seller of the smart appliance. Sharpe, however, does disclose as prior art the manufacturer providing information regarding the smart device (Sharpe, col. 2, lines 30-67). This disclosure is silent as to whether the manufacturer maintains and updates that data.

In the same field of endeavor, O'Hagan teaches the use of seller web sites (maintained and updated by the seller) to download product related information to a smart device (Advertisement banners, among other information, are downloaded and control information to display the banner is generated by the controller, O'Hagan, col. 3, lines 36-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have incorporated the use of seller databases into the system of Sharpe for the purpose of obtaining most relevant and up to date information.

11. As to claim 36, Sharpe-O'Hagan teaches the method as applied in claim 35, wherein the seller of the smart device comprises one or more of a manufacturer of the smart device, a wholesaler of the smart device, and a retailer of the smart device (Sharpe, col. 2, line 30-67; O'Hagan, col. 3, lines 36-65).

12. As to claims 37, Sharpe-O'Hagan teaches the method as applied in claim 35, wherein the usage information comprises one or more of:

An average length of time the one or more smart devices has been in operation over a period of time; A number of occasions the one or more smart devices has been in operation over the period of time; A number of times maintenance was performed on the one or more smart devices over the period of time; and Types of maintenance operations that were performed on the one or more smart devices over the period of time (Sharpe, col. 1, lines 36-58 and col. 5, line 65 – col. 6, line 62).

### ***Response to Arguments***

Applicant's arguments filed April 3, 2003 (paper no. 21) have been fully considered but they are not persuasive.

The Applicants argued in substance that “[i]n contrast [to the prior art of record], claim 26 requires that a central computer monitoring the smart device request information from the remote database. This database is not for storing data collected by the smart device to be used remotely, this database is ‘maintained and periodically updated by a seller of the smart appliance’ to enable the central computer to control the smart appliance... The O’Hagan reference thus does not teach the limitations purported by the Examiner.” See Remarks, pages 7-9.

The remote database (FMS database 40) does not merely store information gathered by the smart device, but also stores other data such as smart device configuration and maintenance information. Database 40 stores such information for both on-line and off-line devices. Additionally, the examiner has cited the O’Hagan reference to show teachings where a remote database is maintained and periodically updated by a seller.



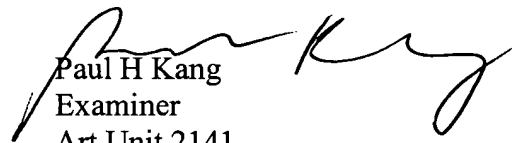
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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul H Kang whose telephone number is (703) 308-6123. The examiner can normally be reached on 9 hour flex. First Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharja can be reached on (703) 305-4003. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

  
Paul H Kang  
Examiner  
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